Curtis

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aerojet Ordnance Company

File: B-235178

Date: July 19, 1989

DIGEST

Protest that procuring agency was required to hold discussions with protester before awarding contract to another firm is denied where protester's interpretation of the solicitation as requiring discussions is not reasonable or consistent with the solicitation as a whole.

DECISION

Aerojet Ordnance Company protests a decision by the Department of the Army not to award a contract to Aerojet under request for proposals (RFP) No. DAAA09-88-R-0236, issued for cartridge ammunition.

We deny the protest.

The RFP was issued on December 13, 1988, with a closing date for the receipt of proposals of January 30, 1989, to Aerojet and Honeywell, Inc., the mobilization base producers1/ for this item. The RFP required offerors to submit prices for a base year in various quantity ranges and for 3 option years. The RFP also required offerors to submit prices to provide 100 percent, 60 percent and 40 percent of the quantity of cartridges the government chose to order. The RFP provided that the government would award either one contract for 100 percent of its requirement or two

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1/ A mobilization base planned producer is an industrial firm that has indicated its willingness to produce specified items in a national emergency by completing a Department of Defense Industrial Preparedness Program Production Planning Schedule (DD Form 1519). Orlite Eng'g Co., Ltd., B-228373, Jan. 26, 1988, 88-1 CPD ¶ 76. Military agencies have authority pursuant to 10 U.S.C. § 2304(b)(1)(B)-(c)(3) (Supp. IV 1986) to limit competition to maintain the industrial mobilization base. Id.

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contracts, one for 60 percent of its requirement and a second for 40 percent of its requirement.

Both Aerojet and Honeywell responded to the RFP. The Army first evaluated the proposals for price and determined that the offer submitted by Honeywell to provide 100 percent of the government's requirement for $190,562,715, was the lowest cost alternative. The combination for a split award that would result in the lowest cost to the government was an award to Honeywell for 60 percent of the requirement at $135,917,733, and an award to Aerojet for 40 percent at $109,619,813, for a total price of $245,537,546.

The Army then evaluated the offers to determine whether to make one or two awards. The Army first found that the production capacity of the offerors did not dictate the need for multiple awards because both offerors had the capacity to produce the total required number of cartridges. The Army then determined that because only target rounds and not combat rounds were needed, the mobilization base did not require multiple awards. Finally, the Army concluded that since multiple awards were not required by the production capacity of the manufacturers or by the mobilization base, and since awarding two contracts would involve a premium of approximately 25 percent over making a single award to Honeywell, multiple awards were not in the government's best interest. Consequently, the Army awarded a single contract to Honeywell to provide 100 percent of its requirement.

Aerojet now protests that pursuant to section M-2(E) of the RFP, the Army was required to hold discussions with Aerojet in regard to its price for a 40 percent award before awarding a single contract to Honeywell for 100 percent of its requirement. As support for its position, Aerojet relies on the second paragraph of section M-2(E); in full, section M-2(E) provides:

> "E. In the event of multiple awards, the first award, consisting of the 60% alternative, will be made to the evaluated low responsive, responsible offeror after that offeror's price has been determined fair and reasonable based on competition and/or cost price analysis with negotiation. The contractor receiving the first award will not be eligible for the second award except as stipulated later in this clause.
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> "If the combination of the proposed awards for a 60/40 split is not the combination which results in the lowest cost to the government,

> a best and final proposal from/and/or negotiation with the firm scheduled to receive the 40% award will be required.
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> "The determination to make either one or two awards will be at the discretion of the government, taking into consideration such factors as the premium involved, production capability, and mobilization base requirements. Omission of the option provision of this solicitation may render your proposal unacceptable.
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> "In the event the offeror scheduled to receive the 40% alternative submits an unacceptable proposal, the government reserves the right to cancel that portion of the solicitation and resolicit, exercise available options for that quantity, or negotiate a 100% award with the low evaluated offeror."

The Army argues that to the extent Aerojet believes that the RFP required the Army to negotiate with Aerojet prior to awarding a single contract to Honeywell, Aerojet has misinterpreted the RFP. According to the Army, Aerojet incorrectly construes each clause of section M-2(E) as a separate subparagraph which must be independently read and applied. To the contrary, argues the Army, paragraph (E) is one interdependent paragraph and each subsection of the paragraph is conditioned on the words that begin the paragraph, "In the event of multiple awards . . . ." Thus, the Army argues that it was only required to hold discussions with the potential 40 percent offeror after it had determined to make multiple awards, a situation not present here.

The Army further argues that the clause on which Aerojet relies--"If the combination of proposed awards . . . is not the combination which results in the lowest cost . . ."--demonstrates that discussions were only required if the Army was comparing proposed combination awards, not if it was comparing a combination award with a single award. Thus, the Army argues that even had it decided to make multiple awards, it was required to hold discussions with the proposed 40 percent awardee only if the proposed 60/40 combination was not the lowest 60/40 combination. That is, explains the Army, if it decided to make split awards under the RFP, then, under the first paragraph of section M-2(E), the 60 percent award had to be made to the offeror who submitted the low offer for the 60 percent quantity, and the 40 percent award had to be made to the

other offeror, even if the total cost to the government would be less if the awards were reversed. Only in this case, asserts the Army, must discussions be held with the proposed 40 percent awardee. The Army concludes that since Honeywell offered the lowest price for the 60 percent quantity and the combination that would result in the lowest cost would be to award 60 percent of the requirement to Honeywell and 40 percent of the requirement to Aerojet, discussions would not be required in this case even if the Army had decided to make split awards.

Finally, the Army notes that a 100 percent award would always be lower priced than a split award and that the RFP reserved the Army's right to make an award on the basis of initial proposals. The Army argues that Aerojet's interpretation of section M-2(E), as requiring discussions with the 40 percent awardee whenever the proposed 60/40 combination is not the lowest overall cost offer thus, is unreasonable because it would negate the Army's reservation of the right to make award on the basis of initial proposals.

Aerojet disputes the Army's position and argues that its interpretation--that section M-2(E) sets out independent subparagraphs, each to be separately applied, and thus, that pursuant to the second paragraph the Army was required to hold discussions with the potential 40 percent awardee before awarding a single contract--is the only reasonable interpretation of the RFP. In this regard, Aerojet first asserts that if, as the Army contends, each subparagraph is contingent on the phrase, "In the event of multiple awards . . .," then the third paragraph, which sets out the evaluation criteria to be used in determining whether to make a single award or multiple awards, is meaningless. Second, argues Aerojet, since premium is one of the factors to be considered in determining how many awards to make, the Army should be required to negotiate to achieve the lowest possible premium before performing its evaluation.

Aerojet next notes that the second paragraph provides, "If the combination for a 60/40 split is not the combination which results in the lowest cost to the government (emphasis added)," not the "lowest cost combination." Aerojet contends that this language shows that the Army's ultimate concern was the lowest overall cost and not simply the lowest cost combination, and supports its position that the Army was required to compare possible combination awards against a single award as well as against each other.

Finally, with regard to the RFP provisions that permit the Army to make an award on the basis of initial proposals, Aerojet states that it construed those provisions as putting

offerors on notice that the Army could make multiple awards or could award the 60 percent portion without holding discussions.

Where, as here, a dispute exists as to the actual meaning of a solicitation requirement, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Collington Assocs., B-231788, Oct. 18, 1988, 88-2 CPD ¶ 363. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Captain Hook Trading Co., B-224013, Nov. 17, 1986, 86-2 CPD ¶ 566. In this case, we find that Aerojet's interpretation of section M-2(E) is not a reasonable one.

Even assuming, as Aerojet argues, that each clause of section M-2(E) is an independent paragraph to be separately applied in the award process, we do not agree with Aerojet that the RFP required the Army to hold negotiations with Aerojet prior to awarding a single contract to Honeywell. First, in our view the plain language of the second paragraph of section M-2(E) supports the Army's interpretation of the provision. As a preliminary matter, the clause refers to the combination of "proposed awards," indicating that the requirement for discussions was triggered only after the Army had already decided to make a split award. Further, as noted above, the provision calls for negotiations with the firm in line for a 40 percent award only when the proposed split awards are not the "combination which results in the lowest cost to the government. (Emphasis added.)" This language clearly refers only to a situation where the split award dictated by the first paragraph of section M-2(E)--based on making award to the firm offering the lowest price for a 60 percent award, with the other offeror receiving the 40 percent award--is not the lowest priced split award. There is nothing in the language to suggest that the Army planned to compare split awards against a single award, as Aerojet argues. In addition, Aerojet's contention that the provision would have specifically referred to the "lowest combination cost" had the Army intended to compare only split awards is unpersuasive; given that the provision already refers to the "combination which results in the lowest cost to the government," any further reference to "lowest combination cost" would be redundant.2/

2/ Under Aerojet's interpretation, the provision would refer to the "combination which results in the lowest combination cost to the government."

Second, Aerojet's interpretation would negate section L-18 of the RFP which reserves to the Army the right to award the contract on the basis of initial proposals. While Aerojet disputes this finding, arguing that under its interpretation the Army still could make multiple awards on the basis of initial proposals, section L-18 reserves the Army's right to make either single or multiple awards on the basis of initial proposals.

Finally, we find unpersuasive Aerojet's argument that the Army was required to negotiate the lowest possible premium before performing the evaluation because premium is one of the factors to be considered in determining whether to make one or two awards. In this regard, we have consistently stated that offerors are to submit their best prices at the first opportunity or run the risk of being excluded from further competition for the award. Cosmos Eng'rs, Inc., B-218318, May 1, 1985, 85-1 CPD ¶ 491; Informatics General Corp., B-210709, June 30, 1983, 83-2 CPD ¶ 47. Thus, it is reasonable to assume that the Army intended to determine whether to make a single award or multiple awards based on the premium established by the initial proposals. Moreover, the fact that section M-2(E) limits negotiations to the 40 percent awardee is inconsistent with Aerojet's position that the Army could not rely on initial proposals as a valid measure of the premium involved in making split awards. If, as Aerojet argues, the purpose of the second paragraph of section M-2(E) was to require negotiation of the lowest premium, logically the provision would call for negotiations with both offerors on their single and multiple award prices, not just with the offeror in line for the 40 percent award.

Accordingly, we find that the only reasonable interpretation of section M-2(E) is that negotiations with the proposed 40 percent awardee were required only if the Army planned to make a split award that was not the lowest cost split award. In view of our finding, we conclude that the Army was not required to negotiate with Aerojet concerning its price for a 40 percent award before awarding a single contract to Honeywell.

The protest is denied.

for Seymour Efros

James F. Hinchman
General Counsel